CONTRACTS—CONSIDERATION—ADEQUACY.—The purchaser in a land contract which provided for forfeiture, being in arrears in his payments, purported to assign his equity, which amounted to approximately $300, to the vendor in consideration of a cash payment of $5. In a suit in equity brought to recover the amount paid on the contract in excess of the rental value of the premises, *held,* that the assignment was ineffectual because the consideration for it was grossly inadequate. *Beaden* v. *Bransford Realty Co.,* (Tenn., 1921), 232 S. W. 958.

It is noteworthy that the court in the principal case seems to place its decision squarely upon the ground of inadequacy of consideration pure and simple. It is generally said that mere inadequacy is not a ground for interference in equity any more than it is at law. See POMEROY, EQUITY JURISPRUDENCE, [4th Ed.], §926, citing many cases. Also, *Judge* v. *Wilkins,* 19 Ala. 765; *Knobb* v. *Lindsay,* 5 Ohio 469; *Davidson* v. *Little,* 22 Pa. St. 245. It is sometimes said that the inadequacy may be so great as to raise a conclusive presumption of fraud. However, most of the cases in which this statement is made will, on examination, be found to contain evidences of other circumstances tending to justify equitable interference. See *Prudential Insurance Co.* v. *LaChance,* 113 Me. 550; *Madison Co.* v. *The People, ex rel.,* 58 Ill. 456; *Byers* v. *Surget,* 19 How. (U. S.) 303; *Morriso* v. *Philliber,* 30 Mo. 145. There is no doubt that gross inadequacy is evidence of fraud in fact. *Davidson* v. *Little,* 22 Pa. St. 245; *Morriso* v. *Philliber,* 30 Mo. 145.

CONTRACTS—CONSIDERATION—DOING WHAT ONE IS ALREADY UNDER CONTRACT TO DO.—Where the parties to an employment contract entered into a second agreement, differing from the first only in the amount of the compensation, *held,* second agreement enforcible upon a finding that there had been an express, simultaneous rescission of the first contract. *Schartzreich* v. *Bauman-Basch, Inc.,* (N. Y., 1921), 131 N. E. 887.

The general rule is that a promise to perform, or performance of, what one is already under contract to do, is not a sufficient consideration for a promise of increased compensation or other additional benefit, since there is neither detriment to the promisee nor benefit to the promissor. *Harris* v. *Watson,* Peake 72; *Frazer* v. *Hatton,* 2 C. B. N. S. 512; *Alaska Packers' Ass'n* v. *Domenico,* 117 Fed. 99.; *Phoenix Ins. Co.* v. *Rink,* 110 Ill. 538; *McQuaid* v. *Baughman,* 167 Ill. App. 430; *Lingenfelder* v. *Wainwright Brewing Co.,* 103 Mo. 578; *Shriner* v. *Craft,* 166 Ala. 146. For complete list, see WILLISTON ON CONTRACTS, Sec. 130. The contrary view is followed in a few jurisdictions, upon the ground that the new agreement is elected by the promissor in place of an action for damages for refusal of promisee to perform the first contract,—*Parrot* v. *Mexican Ry.,* 207 Mass. 184; *Evans* v. *Oregon & Wash. R. R. Co.,* 58 Wash. 429 (but see 16 MICH. L. REV. 106); or that the new contract is evidence of the abrogation of the old one and that it is the same as if no previous contract had been made,—*Coyner* v. *Lynde,* 10 Ind. 282; *Goebel* v. *Linn,* 47 Mich. 489; *Evans* v. *Oregon & Wash. R. R. Co.,* 58 Wash. 429; *Rollins* v. *Marsh,* 128 Mass. 116; or that the new contract is an attempt to mitigate the damages flowing from the breach of

the first,—*Endriss* v. *Belle Isle Ice Co.*, 49 Mich. 279. New York has followed the general rule in the later cases,—*Weed* v. *Spears*, 193 N. Y. 289; *Kuhmarker Mfg. Co.* v. *Hills*, 146 N. Y. Supp. 1013; and professes to follow it in the principal case. The New York courts would not admit the competency of the second agreement impliedly to rescind the first,—*Obrentz* v. *Wesenfeld*, 103 N. Y. Misc. 664 (dictum), and principal case; nor would it recognize a consideration in the second without a rescission of the first. *Vanderbilt* v. *Schreyer*, 91 N. Y. 392; *Obrentz* v. *Wesenfeld*, 103 N. Y. Misc. 664; *Price* v. *Press Pub. Co.*, 117 N. Y. App. Div. 854. But the court says that although a rescission of the first contract is necessary to the finding of a legal consideration in the second, yet it matters not whether such rescission is before or at the time of the making of the second agreement, so long as it is express. It may, perhaps, be granted that a logical basis for finding consideration would exist by virtue of this "simultaneous rescission," in that promisee accepted a new contract in place of the old one, which might be construed as legal detriment. But on broad policy there would seem to be a weakness in the reasoning which found a legal detriment in the substitution of a right to $125 per month for a right to $90 per month, and that in essence is what it amounted to. *Lingenfelder* v. *Wainwright Brewing Co.*, 103 Mo. 578. Professor Williston, in his work on Contracts, gives what would seem to be the best rule. To find a consideration in these cases he would require that there be a moment of time when both parties are freed of their obligations under the first contract, so that each of them could refuse to enter into any bargain whatever relating to the same subject matter; for unless such a moment of time elapse, the total effect of the second transaction is that one party promises to do exactly what he is already contractually bound to do, and the other party promises to give an additional compensation or bonus therefor. WILLISTON ON CONTRACTS, Sec. 130.

CONTRACTS—CONSIDERATION—ILLUSORY PROMISE.—The plaintiff, a jobber, desiring glue for resale only, contracted with the defendant, a glue manufacturer, to supply the plaintiff's "requirements" of a certain quality of glue for one year. In a suit for failure to supply, it was *held*, that the contract was void for lack of mutuality. *Oscar Schlegel Mfg. Co.* v. *Peter Cooper's Glue Factory*, (N. Y., 1921), 132 N. E. 148.

In such cases the mutuality of consideration depends on the meaning given the word "requirements," the court in the principal case interpreting it as "that which is demanded." Thus, it was pointed out that the plaintiff had not obligated itself to do more than what it wanted to do. A similar result was reached where the plaintiff, a foundry concern, contracted with the defendant to supply all the pig iron "wanted" by plaintiff in its business. *Bailey et al.* v. *Austrian*, 19 Minn. 535. On the other hand, where the vendee was engaged in a business requiring the article contracted for, the contract has often been upheld on another interpretation of "requirements," viz., express or implied promises to take what was actually needed in the business. *Wells* v. *Alexandre*, 130 N. Y. 642; *E. G. Dailey Co.* v. *Clark Can Co.*, 128